

1 WILLIAM C. SCHROEDER, WSBA 41986
2 **KSB LITIGATION, P.S.**
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7 *Plaintiff*

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**

10 WILLIAM C. SCHROEDER, an
11 individual,

12 Plaintiff,

13 v.

14 UNITED STATES OF
15 AMERICA,

16 Defendant.
17

No.

**COMPLAINT FOR
DECLARATORY RELIEF
RE: 2 U.S.C. § 2a(a); U.S. CONST.
Art. I, § 2; and Art. II, § 1**

[Three Judge Panel Requested
pursuant to 28 U.S.C. § 2284(a)]

18 COMES NOW the above-named Plaintiff, who seeks a declaratory
19 judgment that 2 U.S.C. § 2a(a), which permanently limits the House of
20 Representatives to its size as of 1912 [435 members], deprives citizens
21 of their constitutional rights to equal representation in the House of
22 Representatives [U.S.CONST., Art. I, § 2], and to equal representation in
23 the electoral college for the presidency [U.S.CONST., Art. II, § 1], and is
24 not consistent with the Supreme Court's 'one person, one vote'
25 jurisprudence.
26
27
28

PARTIES

1
2
3 1. Plaintiff William C. Schroeder is a natural born citizen who
4 resides within the Eastern District of Washington and has registered
5 to vote in Washington state.

6 2. Defendant is the United States of America. F.R.Civ.P. 4(i).

JURISDICTION AND VENUE

7
8
9 3. “The district courts shall have original jurisdiction of all civil
10 actions arising under the Constitution, laws, or treaties of the United
11 States.” 28 U.S.C. § 1331.

12 4. “The district courts shall have original jurisdiction of any
13 civil action authorized by law to be commenced by any person ... To ...
14 secure equitable or other relief under any Act of Congress providing for
15 the protection of civil rights, including the right to vote.” 28 U.S.C. §
16 1343(a)(4).

17
18 5. “The district courts shall have original jurisdiction ... of ...
19 Any other civil action or claim against the Unites States, not exceeding
20 \$10,000 in amount, founded either upon the Constitution, or an Act of
21 Congress[.]” 28 U.S.C. § 1346(a)(2).

22 6. Venue is proper in the Eastern District of Washington. See
23 28 U.S.C. § 1391(e)(1)(C).

24
25 7. “A district court of three judges shall be convened ... when
26 an action is filed challenging the constitutionality of the apportionment
27 of congressional districts[.]” 28 U.S.C. § 2284(a).

FACTUAL HISTORY

1787

8. Composition of the House of Representatives:

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States[.] ... Representatives ... shall be apportioned among the several States which may be included within this Union, according to their respective ...whole Number of [] Persons[.] ... The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative[.]

U.S.CONST., Art. I, § 2.

9. “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress[.]” U.S.CONST., Art. II, § 1.

10. “The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” U.S.CONST., Art. III, § 1.

11. “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” U.S.CONST., Art. IV, § 2.

12. “New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the

1 Jurisdiction of any other State ... without the Consent of the
2 Legislature[] of the State[] concerned as well as of the Congress.”
3 U.S.CONST., Art. IV, § 3.
4

5 **1789**

6 13. On September 25, 1789, the First Congress proposed twelve
7 (12) “Articles” [of amendment] to the Constitution.
8

9 14. Articles 3 through 12 were ratified by three-fourths of the
10 state legislatures as of December 15, 1791, as the First through Tenth
11 Amendments. Article 2 was ratified in 1992, as the Twenty-Seventh
12 Amendment.

13 15. Article “the first”, never ratified, provides:
14

15 After the first enumeration required by the first article of the
16 Constitution, there shall be one Representative for every
17 thirty thousand, until the number shall amount to one
18 hundred, after which the proportion shall be so regulated by
19 Congress, that there shall be not less than one hundred
20 Representatives, nor less than one Representative for every
21 forty thousand persons, until the number of Representatives
22 shall amount to two hundred; after which the proportion shall
be so regulated by Congress, that there shall not be less than
two hundred Representatives, nor more than one
Representative for every fifty thousand persons.

23 16. The Constitution imposes no size restrictions upon the House
24 of Representatives, save that stated in Art. I, § 2.

25 17. The Judiciary Act of 1789 established a six-member Supreme
26 Court, comprised of one chief justice and five associate justices.
27
28

1 1790

2
3 18. The first census counted 3,929,214 resident persons of the
4 thirteen (13) United States, as of August 2, 1790.

5 1791

6 19. “No person shall ... be deprived of life, liberty, or property,
7 without due process of law[.]” U.S.CONST., Fifth Amend.

8 1792

9
10 20. “[T]he House of Representatives shall be composed of
11 members elected agreeably to a ratio of one member for every thirty-
12 three thousand persons in each state[.]” Apportionment Act of April 14,
13 1792, 2nd Cong., Sess. I, Ch. 23. [Attachment 1]

14 1800

15 21. The second census counted 5,308,483 resident persons in the
16 sixteen (16) United States, as of August 4, 1800.

17 1802

18
19 22. “[T]he House of Representatives shall be composed of [141]
20 members elected agreeably to a ratio of one member for every thirty-
21 three thousand persons in each state[.]” Apportionment Act of January
22 14, 1802, 7th Cong., Sess. I, Ch. 1. [Att. 2]

23 1804

24
25 23. The Twelfth Amendment modified Art. II, § 1, Cl. 3, by
26 specifying that each Elector must cast distinct votes for president and
27 vice president, instead of two votes for president.
28

1807

24. The Seventh Circuit Act of 1807 increased the size of the Supreme Court to seven (7) members.

1810

25. The third census counted 7,239,861 resident persons in the seventeen (17) United States, as of August 6, 1810.

1811

26. “[T]he House of Representatives shall be composed of [181] members elected agreeably to a ratio of one representative for every thirty-five thousand persons in each state[.]” Apportionment Act of December 21, 1811, 12th Cong., Sess. I, Ch. 9. [Att. 3]

1820

27. Maine became a state on March 15, 1820, with the consent of the legislature of the state of Massachusetts.

28. “[I]n the election of representatives in the seventeenth Congress, the state of Massachusetts shall be entitled to choose thirteen representatives only; and the state of Maine shall be entitled to choose seven representatives, according to the consent of the legislature of said state of Massachusetts[.]” 16th Cong., Sess. I, Ch. 39 (April 7, 1820).

29. The fourth census counted 9,638,453 resident persons in the twenty-three (23) United States, as of August 7, 1820.

1822 – 1823

30. “[T]he House of Representatives shall be composed of [215] members elected agreeably to a ratio of one representative for every forty-seven thousand persons in each state[.]” Apportionment Act of March 7, 1822, 17th Cong., Sess. I, Ch. 10 (March 7, 1822). [Att. 4]

1824 – 1825

31. Pursuant to the Twelfth Amendment, the House elected John Quincy-Adams to the presidency.

1830

32. The fifth census counted 12,860,702 resident persons in the twenty-four (24) United States, as of June 1, 1830.

1832

33. “[T]he House of Representatives shall be composed of [240] members, elected agreeably to a ratio of one representative for every forty-seven thousand and seven hundred persons in each state[.]” Apportionment Act of May 22, 1832, 22nd Cong., Sess. I, Ch. 91. [Att. 5]

1840

34. The sixth census counted 17,063,353 resident persons in the twenty-six (26) United States, as of June 1, 1840.

1842

35. “[T]he House of Representatives shall be composed of [223] members elected agreeably to a ratio of one Representative for every

1 seventy thousand six hundred and eighty persons in each State, and of
2 one additional representative for each State having a fraction greater
3 than one moiety of the said ratio[.]” Apportionment Act of June 25,
4 1842, 27th Cong., Sess. II, Ch. 47. [Att. 6]
5

6 **1850**

7 36. The aggregate population of the United States “shall be
8 divided by the number two hundred and thirty-three [233], and the
9 product of such division ... shall be the ratio, or rule of apportionment,
10 of representatives among the several States[.]” Census Act of 1850, 31st
11 Cong., Sess. I, Ch. 11, Sec. 25 (May 23, 1850). [Att. 7]
12

13 37. The seventh census counted 23,191,876 resident persons in
14 the thirty (30) United States, as of June 1, 1850.
15

16 **1852**

17 38. “[T]he whole number of representatives is hereby increased
18 to two hundred thirty-four [234][.]” Apportionment Act of July 30, 1852,
19 32nd Cong., Sess. I, Ch. 74. [Att. 8]
20

21 **1860**

22 39. The eighth census counted 31,443,321 resident persons in
23 the thirty-three (33) United States, as of June 1, 1860.
24

25 **1862**

26 40. “[T]he number of members of the House of Representatives
27 of the Congress of the United States shall be two hundred and forty-
28 one [241], and the eight additional members shall be assigned one each

1 to Pennsylvania, Ohio, Kentucky, Illinois, Iowa, Minnesota, Vermont,
2 and Rhode Island.” Apportionment Act of March 4, 1862, 37th Cong.,
3 Sess. II, Ch. 36. [Att. 9]
4

5 **1863**

6 41. The Supreme Court increased in size to ten (10) members.

7 **1868**

8 42. “Representatives shall be apportioned among the several
9 States according to their respective numbers, counting the whole
10 number of persons in each State[.]” U.S.CONST. Fourteenth Amend. § 2.
11

12 43. “All persons born or naturalized in the United States, and
13 subject to the jurisdiction thereof, are citizens of the United States and
14 of the State wherein they reside.” U.S.CONST. Fourteenth Amend. § 1.
15

16 44. Each citizen has a “right to vote at any election for the choice
17 of electors for President and Vice-President of the United States,
18 Representatives in Congress, the Executive and Judicial officers of a
19 State, or the members of the Legislature thereof[.]” U.S.CONST.
20 Fourteenth Amend. § 2.

21 **1869**

22 45. The Judiciary Act of 1869 matched the size of the Supreme
23 Court to the nine (9) then-existing U.S. Circuit Courts, comprised of one
24 (1) chief justice and eight (8) associate justices. [41st Cong., Sess. 1, Ch.
25 22; 16 Stat. 44]
26
27
28

1870

46. “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” U.S.CONST., Fifteenth Amend., § 1 (February 3, 1870).

47. The ninth census counted 38,558,371 resident persons in the thirty-seven (37) United States, as of June 1, 1870.

1872

48. “[T]he House of Representatives shall be composed of two hundred and eighty-three [283] members, to be apportioned among the several States in accordance with the provisions of this act[.]” Apportionment Act of February 2, 1872, 42nd Cong., Sess. II, Ch. 11, Sec. 1. [Att. 10]

49. “[T]he following States shall be entitled to one [1] representative each in the Congress of the United States in addition to the number apportioned to such States by the act [of February 2, 1872], to wit: New Hampshire, Vermont, New York, Pennsylvania, Indiana, Tennessee, Louisiana, Alabama, and Florida[.]” Apportionment Act of May 30, 1872, 42nd Cong., Sess. II, Ch. 239. [Att. 11]

1876 – 1877

50. Samuel Tilden won the popular vote by 252,666 votes and secured 184 electoral votes to Rutherford B. Hayes’ 165, but 20 electoral votes from Florida, Louisiana, South Carolina, and Oregon were

1 disputed. The resulting Compromise of 1877 saw the political parties
2 agree to award the disputed 20 electoral votes to Hayes, in exchange
3 for the end of Reconstruction.
4

5 **1880**

6 51. The tenth census counted 50,189,209 resident persons in the
7 thirty-eight (38) United States, as of June 1, 1880.
8

9 **1882**

10 52. “[T]he House of Representatives shall be composed of three
11 hundred and twenty-five [325] members, to be apportioned among the
12 several States as follows: [list][.]” Apportionment Act of February 25,
13 1882, 47th Cong., Sess. I, Ch. 20. [Att. 12]
14

15 53. “[W]henever a new State is admitted to the Union the
16 Representative or Representatives assigned to it shall be in addition to
17 the number three hundred and twenty-five [325].” [Id.]
18

19 **1888**

20 54. Benjamin Harrison defeated Grover Cleveland, 233 electoral
21 votes to 168, but lost the popular vote by 90,596.
22

23 **1890**

24 55. The eleventh census counted 62,979,766 resident persons in
25 the forty-two (42) United States, as of June 1, 1890.
26

27 **1891**

28 56. “[T]he House of Representatives shall be composed of three
hundred and fifty-six [356] members, to be apportioned among the

1 several States as follows: [list] [.]” Apportionment Act of February 7,
2 1891, 51st Cong., Sess. II, Ch. 116. [Att. 13]

3
4 57. “[W]henever a new State is admitted to the Union the
5 Representative or Representatives assigned to it shall be in addition to
6 the number three hundred and fifty-six [356].” [Id.]

7 58. The Judiciary Act of 1891 reorganized the federal courts
8 system, changing the then-existing nine circuit courts into numbered
9 Courts of Appeals. The Supreme Court remained at nine (9) members.

10
11 1893

12 59. Congress created the Court of Appeals for the District of
13 Columbia but did not increase the size of the Supreme Court.

14 1900

15 60. The twelfth census counted 76,212,168 resident persons in
16 the forty-five (45) United States, as of June 1, 1900.

17
18 1901

19 61. “[T]he House of Representatives shall be composed of three
20 hundred and eighty-six [386] members, to be apportioned among the
21 several States as follows: [list] [.]” Apportionment Act of January 16,
22 1901, 56th Cong., Sess. II, Ch. 93. [Att. 14]

23
24 62. “[W]henever a new State is admitted to the Union the
25 Representative or Representatives assigned to it shall be in addition to
26 the number three hundred and eighty-six [386].” [Id.]

1910

63. The thirteenth census counted 92,228,496 resident persons in the forty-six (46) United States, as of April 15, 1910.

1910				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
New York	9,113,614	43	6	211,836
Pennsylvania	7,665,111	36	4	212,920
Illinois	5,638,591	27	2	208,837
Ohio	4,767,121	22	1	216,687
Texas	3,896,542	18	2	216,475
Massachusetts	3,366,416	16	2	210,401
Missouri	3,293,335	16	0	205,833
Michigan	2,810,173	13	1	216,167
Indiana	2,700,876	13	0	207,760
Georgia	2,609,121	12	1	217,427
New Jersey	2,537,167	12	2	211,431
California	2,377,549	11	3	216,051
Wisconsin	2,333,860	11	0	212,078
Kentucky	2,289,905	11	0	208,173
Iowa	2,224,771	11	0	202,252
North Carolina	2,206,287	10	0	220,629
Tennessee	2,184,789	10	0	218,479

Alabama	2,138,093	10	1	213,809
Minnesota	2,075,708	10	1	207,438
Virginia	2,061,612	10	0	206,161
Mississippi	1,797,114	8	0	224,639
Kansas	1,690,949	8	0	211,369
Oklahoma	1,657,155	8	8	207,144
Louisiana	1,656,388	8	1	207,049
Arkansas	1,574,449	7	0	224,921
South Carolina	1,515,400	7	0	216,486
Maryland	1,295,346	6	0	215,891
West Virginia	1,221,119	6	1	203,520
Nebraska	1,192,214	6	0	198,702
<u>Washington</u>	<u>1,141,990</u>	<u>5</u>	<u>2</u>	<u>228,027</u> <u>[Largest]</u>
Connecticut	1,114,756	5	0	222,951
Colorado	799,024	4	1	199,643
Florida	752,619	4	1	188,155
Maine	742,371	4	0	185,593
Oregon	672,765	3	1	224,255
South Dakota	583,888	3	1	191,892
North Dakota	577,056	3	1	191,468
Rhode Island	542,610	3	1	180,870
New Hampshire	430,572	2	0	215,286
Montana	376,053	2	1	183,169

Utah	373,351	2	1	185,932
Vermont	355,956	2	0	177,978
Idaho	325,594	2	1	161,720
Delaware	202,322	1	0	202,322
Wyoming	145,965	1	0	145,965
<u>Nevada</u>	<u>81,875</u>	<u>1</u>	<u>0</u>	<u>80,293</u> <u>[Smallest]</u>
Alaska		X	X	X
Arizona		X	X	X
Hawaii		X	X	X
New Mexico		X	X	X
*****	*****	***	**	*****
United States	92,228,496	433	47	210,328

1911

64. “[T]he House of Representatives shall be composed of four hundred and thirty-three [433] Members, to be apportioned among the several States as follows: [list] [.]” Apportionment Act of August 8, 1911, 62nd Cong., Sess. I, Ch. 5. [Att. 15]

65. “[I]f the Territories of Arizona and New Mexico shall become States in the Union before the apportionment of Representatives under the next decennial census they shall have one Representative each, and if one of such Territories shall so become a State, such State shall have one Representative, which Representative or Representatives shall be

in addition to the number four hundred and thirty-three, as provided in section one of this Act[.]” [Id.]

1913

66. “The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.” U.S.CONST., Seventeenth Amend.

1920

67. The fourteenth census counted 106,021,537 resident persons in the forty-eight (48) United States, as of January 1, 1920.

1920				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
New York	10,385,227	43	0	241,409
Pennsylvania	8,720,017	36	0	242,223
Illinois	6,485,280	27	0	240,196
Ohio	5,759,394	22	0	261,791
Texas	4,663,228	18	0	259,068
Massachusetts	3,852,356	16	0	240,772
Michigan	3,668,412	13	0	282,186
California	3,426,861	11	0	311,457
Missouri	3,404,055	16	0	212,753

New Jersey	3,155,900	12	0	262,992
Indiana	2,930,390	13	0	225,415
Georgia	2,895,832	12	0	241,319
Wisconsin	2,632,067	11	0	239,210
North Carolina	2,559,123	10	0	255,912
Kentucky	2,416,630	11	0	219,694
Iowa	2,404,021	11	0	218,547
Minnesota	2,387,125	10	0	238,566
Alabama	2,348,174	10	0	234,817
Tennessee	2,337,885	10	0	233,789
Virginia	2,309,187	10	0	230,919
Oklahoma	2,028,283	8	0	253,535
Louisiana	1,798,509	8	0	224,814
Mississippi	1,790,618	8	0	223,827
Kansas	1,769,257	8	0	221,157
Arkansas	1,752,204	7	0	250,315
South Carolina	1,683,724	7	0	240,532
West Virginia	1,463,701	6	0	243,950
Maryland	1,449,661	6	0	241,610
Connecticut	1,380,631	5	0	276,126
Washington	1,356,621	5	0	270,919
Nebraska	1,296,372	6	0	216,062
Florida	968,470	4	0	242,118

Colorado	939,629	4	0	234,790
Oregon	783,389	3	0	261,130
Maine	768,014	4	0	192,004
North Dakota	646,872	3	0	214,651
South Dakota	636,547	3	0	210,413
Rhode Island	604,397	3	0	201,466
Montana	548,889	2	0	270,756
Utah	449,396	2	0	224,194
New Hampshire	443,083	2	0	221,542
Idaho	431,866	2	0	215,221
<u>New Mexico</u>	<u>360,350</u>	<u>1</u>	<u>1</u>	<u>353,428</u> <u>[Largest]</u>
Vermont	352,428	2	0	176,214
Arizona	334,162	1	1	309,495
Delaware	223,003	1	0	223,003
Wyoming	194,402	1	0	193,487
<u>Nevada</u>	<u>77,407</u>	<u>1</u>	<u>0</u>	<u>75,820</u> <u>[Smallest]</u>
Alaska		X	X	X
Hawaii		X	X	X
*****	*****	***	**	*****
United States	106,021,537	435	0	241,864

68. “In 1920, the Census Bureau did transmit apportionment counts to Congress, but Congress did not reapportion.” See n.2 at: <https://www.census.gov/data/tables/time-series/dec/apportionment-data-text.html>

1 **69.** “The right of citizens of the United States to vote shall not be
2 denied or abridged by the United States or by any State on account of
3 sex.” U.S.CONST., Nineteenth Amend. (August 18, 1920).

4
5 **1929**

6 **70.** “[T]he tabulation of total population by States as required for
7 the apportionment of Representatives shall be completed within eight
8 months from the beginning of the enumeration and reported by the
9 Director of the Census to the Secretary of Commerce and by him to the
10 President of the United States.” Fifteenth Census and Apportionment
11 Act of June 18, 1929, 71st Cong., Sess. I, Ch. 28, Sec. 2. [Att. 16]
12

13 **71.** “[T]he President shall transmit to the Congress a statement
14 showing the whole number of persons in each State ... as ascertained
15 under the fifteenth and each subsequent decennial census of the
16 population, and the number of Representatives to which each State
17 would be entitled under an apportionment of the then existing number
18 of Representatives [= 435][.]” [Id., Sec. 22(a)]
19

20 **72.** Congress in 1929 created the Court of Appeals for the Tenth
21 Circuit by subdividing the then-existing Court of Appeals for the Eighth
22 Circuit, but did not increase the size of the Supreme Court.
23

24 **1930**

25 **73.** The fifteenth census counted 123,202,624 resident persons in
26 the United States, as of April 1, 1930.
27
28

1930				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
New York	12,588,066	45	2	279,733
Pennsylvania	9,631,350	34	-2	283,274
Illinois	7,630,654	27	0	282,607
Ohio	6,646,697	24	2	276,943
Texas	5,824,715	21	3	277,362
California	5,677,251	20	9	283,412
Michigan	4,842,325	17	4	284,827
Massachusetts	4,249,614	15	-1	283,307
New Jersey	4,041,334	14	2	288,666
Missouri	3,629,367	13	-3	279,162
Indiana	3,238,503	12	-1	269,873
North Carolina	3,170,276	11	1	287,934
Wisconsin	2,939,006	10	-1	293,172
Georgia	2,908,506	10	-2	290,845
Alabama	2,646,248	9	-1	294,027
Tennessee	2,616,556	9	-1	290,722
Kentucky	2,614,589	9	-2	290,508
Minnesota	2,563,953	9	-1	283,509
Iowa	2,470,939	9	-2	274,491
Virginia	2,421,851	9	-1	269,092
Oklahoma	2,396,040	9	1	264,691
Louisiana	2,101,593	8	0	262,699
Mississippi	2,009,821	7	-1	286,879

Kansas	1,880,999	7	-1	268,500
Arkansas	1,854,482	7	0	264,921
South Carolina	1,738,765	6	-1	289,793
West Virginia	1,729,205	6	0	288,200
Maryland	1,631,526	6	0	271,920
Connecticut	1,606,903	6	1	267,816
Washington	1,563,396	6	1	258,737
Florida	1,468,211	5	1	293,638
Nebraska	1,377,963	5	-1	275,025
Colorado	1,035,791	4	0	258,712
Oregon	953,786	3	0	316,793
Maine	797,423	3	-1	265,806
South Dakota	692,849	2	-1	336,503
Rhode Island	687,497	2	-1	343,749
North Dakota	680,845	2	-1	336,670
Montana	537,606	2	0	262,365
Utah	507,847	2	0	252,871
New Hampshire	465,293	2	0	232,646
Idaho	445,032	2	0	220,768
Arizona	435,573	1	1	389,375
<u>New Mexico</u>	<u>423,317</u>	<u>1</u>	<u>1</u>	<u>395,982</u> [Largest]
Vermont	359,611	1	-1	359,611
Delaware	238,380	1	0	238,380
Wyoming	225,565	1	0	223,630
<u>Nevada</u>	<u>91,058</u>	<u>1</u>	<u>0</u>	<u>86,390</u> [Smallest]
Alaska		X	X	X

Hawaii		X	X	X
*****	*****	***	**	*****
United States	123,202,624	435	27	280,675

1940

74. The sixteenth census counted 132,164,569 resident persons in the United States, as of April 1, 1940.

1940				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
New York	13,479,142	45	0	299,536
Pennsylvania	9,900,180	33	-1	300,005
Illinois	7,897,241	26	-1	303,740
Ohio	6,907,612	23	-1	300,331
California	6,907,387	23	3	300,321
Texas	6,414,824	21	0	305,468
Michigan	5,256,106	17	0	309,183
Massachusetts	4,316,721	14	-1	308,337
New Jersey	4,160,165	14	0	297,155
Missouri	3,784,664	13	0	291,128
North Carolina	3,571,623	12	1	297,635
Indiana	3,427,796	11	-1	311,618
Wisconsin	3,137,587	10	0	313,759
Georgia	3,123,723	10	0	312,372

Tennessee	2,915,841	10	1	291,584
Kentucky	2,845,627	9	0	316,181
Alabama	2,832,961	9	0	314,773
Minnesota	2,792,300	9	0	310,256
Virginia	2,677,773	9	0	297,530
Iowa	2,538,268	8	-1	317,284
Louisiana	2,363,880	8	0	295,485
Oklahoma	2,336,434	8	-1	292,054
Mississippi	2,183,796	7	0	311,971
Arkansas	1,949,387	7	0	278,484
West Virginia	1,901,974	6	0	316,996
South Carolina	1,899,804	6	0	316,634
Florida	1,897,414	6	1	316,236
Maryland	1,821,244	6	0	303,541
Kansas	1,801,028	6	-1	300,171
Washington	1,736,191	6	0	289,365
Connecticut	1,709,242	6	0	284,874
Nebraska	1,315,834	4	-1	328,959
Colorado	1,123,296	4	0	280,824
Oregon	1,089,684	4	1	272,421
Maine	847,226	3	0	282,409
Rhode Island	713,346	2	0	356,673
South Dakota	642,961	2	0	321,481

North Dakota	641,935	2	0	320,968
Montana	559,456	2	0	279,728
Utah	550,310	2	0	275,155
New Mexico	531,818	2	1	265,909
Idaho	524,873	2	0	262,437
Arizona	499,261	2	1	249,631
New Hampshire	491,524	2	0	245,762
Vermont	359,231	1	0	359,231 [Largest]
Delaware	266,505	1	0	266,505
Wyoming	250,742	1	0	250,742
Nevada	110,247	1	0	110,247 [Smallest]
Alaska		X	X	X
Hawaii		X	X	X
*****	*****	***	**	*****
United States	132,164,569	435	9	301,164

75. Congress merely copied the 1929 Act in 1940:

[The 1929 Act] to provide for apportionment of Representatives in Congress ... is hereby amended in the first sentence of section 22 (a) by striking out the words “second regular session of the Seventy-First Congress” and substituting the following words: “first regular session of the Seventy-seventh Congress”, and by striking out “fifteenth” and inserting “sixteenth”.

54 Stat. 162, Sec. 1 (April 25, 1940). [Att. 17]

1 **1941**

2

3 **76.** Congress made apportionment of 435 members permanent

4 and automatic:

5

6 Each State shall be entitled, in the Seventy-eighth and in each

7 Congress thereafter until the taking effect of a

8 reapportionment under a subsequent statute[,] ... to the

9 number of Representatives shown in the statement

10 transmitted to the Congress on January 8, 1941, based upon

the method known as the method of equal proportions, no

State to receive less than one Member.

11 Permanent Apportionment Act of November 15, 1941, 77th Cong., Sess.

12 I, Ch. 470, Sec. 2(a). [Att. 18]

13

14 **77.** 2 U.S.C. § 2a(a) now provides:

15 On the first day, or within one week thereafter, of the first

16 regular session of the Eighty-second Congress and of each

17 fifth Congress thereafter, the President shall transmit to the

18 Congress a statement showing the whole number of persons

19 in each State ... as ascertained under the seventeenth and

20 each subsequent decennial census of the population, and the

21 number of Representatives to which each State would be

22 entitled under an apportionment of the then existing number

of Representatives [435] by the method known as the method

of equal proportions, no State to receive less than one

Member.

23 [Att. 18]

24 **78.** 2 U.S.C. § 2a(b) now provides:

25 Each State shall be entitled, in the Eighty-third Congress and

26 in each Congress thereafter until the taking effect of a

27 reapportionment under this section or subsequent statute, to

the number of Representatives shown in the statement required by subsection (a) of this section, no State to receive less than one Member.

[Att. 18]

1950

79. The seventeenth census counted 151,325,798 resident persons in the United States, as of April 1, 1950.

1950				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
New York	14,830,192	43	-2	344,888
California	10,586,223	30	7	352,874
Pennsylvania	10,498,012	30	-3	349,934
Illinois	8,712,176	25	-1	348,487
Ohio	7,946,627	23	0	345,506
Texas	7,711,194	22	1	350,509
Michigan	6,371,766	18	1	353,987
New Jersey	4,835,329	14	0	345,381
Massachusetts	4,690,514	14	0	335,037
North Carolina	4,061,929	12	0	338,494
Missouri	3,954,653	11	-2	359,514
Indiana	3,934,224	11	0	357,657
Georgia	3,444,578	10	0	344,458
Wisconsin	3,434,575	10	0	343,458
Virginia	3,318,680	10	1	331,868
Tennessee	3,291,718	9	-1	365,746
Alabama	3,061,743	9	0	340,194
Minnesota	2,982,483	9	0	331,387

Kentucky	2,944,806	8	-1	368,101
Florida	2,771,305	8	2	346,413
Louisiana	2,683,516	8	0	335,440
Iowa	2,621,073	8	0	327,634
Washington	2,378,963	7	1	339,852
Maryland	2,343,001	7	1	334,714
Oklahoma	2,233,351	6	-2	372,225
Mississippi	2,178,914	6	-1	363,152
South Carolina	2,117,027	6	0	352,838
Connecticut	2,007,280	6	0	334,547
West Virginia	2,005,552	6	0	334,259
Arkansas	1,909,511	6	-1	318,252
Kansas	1,905,299	6	0	317,550
Oregon	1,521,341	4	0	380,335
Nebraska	1,325,510	4	0	331,378
Colorado	1,325,089	4	0	331,272
Maine	913,774	3	0	304,591
<u>Rhode Island</u>	<u>791,896</u>	<u>2</u>	<u>0</u>	<u>395,948</u> <u>[Largest]</u>
Arizona	749,587	2	0	374,794
Utah	688,862	2	0	344,431
New Mexico	681,187	2	0	340,594
South Dakota	652,740	2	0	326,370
North Dakota	619,636	2	0	309,818
Montana	591,024	2	0	295,512
Idaho	588,637	2	0	294,319
New Hampshire	533,242	2	0	266,621
Vermont	377,747	1	0	377,747
Delaware	318,085	1	0	318,085

Wyoming	290,529	1	0	290,529
<u>Nevada</u>	<u>160,083</u>	<u>1</u>	<u>0</u>	<u>160,083</u> <u>[Smallest]</u>
Alaska		X	X	X
Hawaii		X	X	X

*	*****	***	**	*****
United States	151,325,798	435	14	344,587

1954

80. “The Fifth Amendment ... does not contain an equal protection clause as does the Fourteenth Amendment which applies only to the states. But the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive.” *Bolling v. Sharpe*, 347 U.S. 497, 499-500 (1954).

81. *Bolling* concerned segregation in schools in the District of Columbia, to which the Fourteenth Amendment does not apply. *Id.*

82. Holding that the Fifth Amendment’s due process clause forbid racial segregation in D.C. schools, the *Bolling* court explained that “it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government.” *Id.*

83. “The ‘equal protection of the laws’ is a more explicit safeguard of prohibited unfairness than ‘due process of law,’ and, therefore, we do not imply that the two are always interchangeable phrases.” *Id.*

84. “But, ... discrimination may be so unjustifiable as to be violative of due process.” *Id.* at 500.

1958 / 1959

85. Representation of Alaska and Hawaii in the House temporarily added one member per state for a total House of 437, reverting after the next election to a total House of 435. See section 9 of Public Law 85-508, 72 Stat. 339 (July 7, 1958); and section 8 of Public Law 86-3, 73 Stat. 4 (Mar. 18, 1959).

1960

86. The eighteenth census counted 179,323,175 resident persons in the fifty (50) United States, as of April 1, 1960.

1960				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
New York	16,782,304	41	-2	409,324
California	15,717,204	38	8	413,611
Pennsylvania	11,319,366	27	-3	419,236
Illinois	10,081,158	24	-1	420,048
Ohio	9,706,397	24	1	404,433
Texas	9,579,677	23	1	416,508
Michigan	7,823,194	19	1	411,747

New Jersey	6,066,782	15	1	404,452
Massachusetts	5,148,578	12	-2	429,048
Florida	4,951,560	12	4	412,630
Indiana	4,662,498	11	0	423,863
North Carolina	4,556,155	11	-1	414,196
Missouri	4,319,813	10	-1	431,981
Virginia	3,966,949	10	0	396,695
Wisconsin	3,951,777	10	0	395,178
Georgia	3,943,116	10	0	394,312
Tennessee	3,567,089	9	0	396,343
Minnesota	3,413,864	8	-1	426,733
Alabama	3,266,740	8	-1	408,343
Louisiana	3,257,022	8	0	407,128
Maryland	3,100,689	8	1	387,586
Kentucky	3,038,156	7	-1	434,022
Washington	2,853,214	7	0	407,602
Iowa	2,757,537	7	-1	393,934
Connecticut	2,535,234	6	0	422,539
South Carolina	2,382,594	6	0	397,099
Oklahoma	2,328,284	6	0	388,047

Kansas	2,178,611	5	-1	435,722
Mississippi	2,178,141	5	-1	435,628
West Virginia	1,860,421	5	-1	372,084
Arkansas	1,786,272	4	-2	446,568
Oregon	1,768,687	4	0	442,172
Colorado	1,753,947	4	0	438,487
Nebraska	1,411,330	3	-1	470,443
Arizona	1,302,161	3	1	434,054
<u>Maine</u>	<u>969,265</u>	<u>2</u>	<u>-1</u>	<u>484,633</u> <u>[Largest]</u>
New Mexico	951,023	2	0	475,512
Utah	890,627	2	0	445,314
Rhode Island	859,488	2	0	429,744
South Dakota	680,514	2	0	340,257
Montana	674,767	2	0	337,384
Idaho	667,191	2	0	333,596
Hawaii	632,772	2	2	316,386
North Dakota	632,446	2	0	316,223
New Hampshire	606,921	2	0	303,461
Delaware	446,292	1	0	446,292
Vermont	389,881	1	0	389,881

Wyoming	330,066	1	0	330,066
Nevada	285,278	1	0	285,278
<u>Alaska</u>	<u>226,167</u>	<u>1</u>	<u>1</u>	<u>226,167</u> <u>[Smallest]</u>
*****	*****	***	**	*****
United States	179,323,175	435	21	410,481

1962

87. In *Baker v. Carr*, the Supreme Court recognized standing for an individual to challenge the constitutionality of legislative district reapportionment:

Article III, s 2, of the Federal Constitution provides that ‘The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority * * *.’ It is clear that the cause of action is one which ‘arises under’ the Federal Constitution. The complaint alleges that the [Tennessee] statute effects an apportionment that deprives the appellants of the equal protection of the laws in violation of the Fourteenth Amendment.

Baker v. Carr, 369 U.S. 186, 199 (1962) (applying Fourteenth Amendment to Tennessee apportionment statute).

1964

88. The Supreme Court heard argument in *Wesberry v. Sanders*, *infra*, on November 18 and November 19 of 1963.

89. The Twenty-Fourth Amendment took effect on January 23, 1964.

1 The right of citizens of the United States to vote in any
2 primary or other election for President or Vice President, for
3 electors for President or Vice President, or for Senator or
4 Representative in Congress, shall not be denied or abridged
5 by the United States or any State by reason of failure to pay
any poll tax or other tax.

6 U.S.CONST., Twenty-Fourth Amend.

7 90. Rejecting the contention that apportionment under Article I
8 is a non-justiciable political question, the *Wesberry* court explained
9 that “The right to vote is too important in our free society to be stripped
10 of judicial protection by such an interpretation of Article I.” *Wesberry*
11 *v. Sanders*, 376 U.S. 1, 7, 84 S.Ct. 526, 11 L.Ed.2d 481 (Argued Nov. 18
12 and 19, 1963; decided Feb. 17, 1964).

14 We hold that, construed in its historical context, the command
15 of Art. I, s 2, that Representatives be chosen ‘by the People of
16 the several States’ means that as nearly as is practicable one
17 man’s vote in a congressional election is to be worth as much
18 as another’s. This rule is followed automatically, of course,
19 when Representatives are chosen as a group on a statewide
20 basis, as was a widespread practice in the first 50 years of our
21 Nation’s history. ... The history of the Constitution,
22 particularly that part of it relating to the adoption of Art. I, s
23 2, reveals that those who framed the Constitution meant that,
no matter what the mechanics of an election, whether
statewide or by districts, it was population which was to be
the basis of the House of Representatives. [pp. 7-9]

24 ...

25 The debates at the Convention make at least one fact
26 abundantly clear: that when the delegates agreed that the
27 House should represent ‘people’ they intended that in
allocating Congressmen the number assigned to each State
should be determined solely by the number of the State’s

1 inhabitants. The Constitution embodied Edmund Randolph's
2 proposal for a periodic census to ensure 'fair representation of
3 the people,' an idea endorsed by Mason as assuring that
4 'numbers of inhabitants' should always be the measure of
5 representation in the House of Representatives. The
6 Convention also overwhelmingly agreed to a resolution
7 offered by Randolph to base future apportionment squarely on
8 numbers and to delete any reference to wealth. And the
9 delegates defeated a motion made by Elbridge Gerry to limit
10 the number of Representatives from newer Western States so
11 that it would never exceed the number from the original
12 States.

13 ...
14 The House of Representatives, the Convention agreed, was to
15 represent the people as individuals, and on a basis of complete
16 equality for each voter. [pp. 13-14]

17 ...
18 It is in the light of such history that we must construe Art. I,
19 s 2, of the Constitution, which, carrying out the ideas of
20 Madison and those of like views, provides that
21 Representatives shall be chosen 'by the People of the several
22 States' and shall be 'apportioned among the several States * *
23 * according to their respective Numbers.' It is not surprising
24 that our Court has held that this Article gives persons
25 qualified to vote a constitutional right to vote and to have
26 their votes counted. *United States v. Mosley*, 238 U.S. 383, 35
27 S.Ct. 904, 59 L.Ed. 1355; *Ex parte Yarbrough*, 110 U.S. 651, 4
28 S.Ct. 152, 28 L.Ed. 274. Not only can this right to vote not be
denied outright, it cannot, consistently with Article I, be
destroyed by alteration of ballots, see *United States v. Classic*,
313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368, or diluted by
stuffing of the ballot box, see *United States v. Saylor*, 322 U.S.
385, 64 S.Ct. 1101, 88 L.Ed. 1341. No right is more precious
in a free country than that of having a voice in the election of
those who make the laws under which, as good citizens, we
must live. Other rights, even the most basic, are illusory if the
right to vote is undermined. Our Constitution leaves no room
for classification of people in a way that unnecessarily

1 abridges this right. In urging the people to adopt the
2 Constitution, Madison said in No. 57 of *The Federalist*:

3 ‘Who are to be the electors of the Federal
4 Representatives? Not the rich more than the poor;
5 not the learned more than the ignorant; not the
6 haughty heirs of distinguished names, more than
7 the humble sons of obscure and unpropitious
8 fortune. The electors are to be the great body of the
9 people of the United States. * * *’

9 Readers surely could have fairly taken this to mean, ‘one
10 person, one vote.’ Cf. *Gray v. Sanders*, 372 U.S. 368, 381, 83
11 S.Ct. 801, 809, 9 L.Ed.2d 821.

12 While it may not be possible to draw congressional districts
13 with mathematical precision, that is no excuse for ignoring
14 our Constitution's plain objective of making equal
15 representation for equal numbers of people the fundamental
16 goal for the House of Representatives. That is the high
17 standard of justice and common sense which the Founders set
18 for us. [pp. 17-18]

17 *Wesberry v. Sanders*, 376 U.S. at 7-9; 13-14; 17-18 (citations and marks
18 in original).

19
20 **1967**

21 **91.** In 1967, Congress eliminated at-large districts in every state
22 with more than one Representative.

23 In each State entitled in the Ninety-first Congress or in any
24 subsequent Congress thereafter to more than one
25 Representative under an apportionment made pursuant to
26 the provisions of section 2a(a) of this title, there shall be
27 established by law a number of districts equal to the number
28 of Representatives to which such State is so entitled, and
Representatives shall be elected only from districts so

established, no district to elect more than one Representative[.]

2 U.S.C. § 2c; Public Law 90–196; 81 Stat. 581 (Dec. 14, 1967).

1970

92. The nineteenth census counted 203,302,031 resident persons in the United States, as of April 1, 1970.

1970				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
California	19,953,134	43	5	467,415
New York	18,236,967	39	-2	470,207
Pennsylvania	11,793,909	25	-2	475,373
Texas	11,196,730	24	1	470,783
Illinois	11,113,976	24	0	466,013
Ohio	10,652,017	23	-1	466,530
Michigan	8,875,083	19	0	470,379
New Jersey	7,168,164	15	0	480,536
Florida	6,789,443	15	3	457,047
Massachusetts	5,689,170	12	0	477,223
Indiana	5,193,669	11	0	475,287
North Carolina	5,082,059	11	0	465,930
Missouri	4,676,501	10	0	471,803
Virginia	4,648,494	10	0	469,074
Georgia	4,589,575	10	0	462,731
Wisconsin	4,417,731	9	-1	494,113
Tennessee	3,923,687	8	-1	495,133
Maryland	3,922,399	8	0	494,212

1	Minnesota	3,804,971	8	0	479,147
2	Louisiana	3,641,306	8	0	459,001
3	Alabama	3,444,165	7	-1	496,555
4	Washington	3,409,169	7	0	491,927
5	Kentucky	3,218,706	7	0	463,783
6	Connecticut	3,031,709	6	0	508,449
7	Iowa	2,824,376	6	-1	474,487
8	South Carolina	2,590,516	6	0	436,220
9	Oklahoma	2,559,229	6	0	430,914
10	Kansas	2,246,578	5	0	453,169
11	Mississippi	2,216,912	5	0	446,770
12	Colorado	2,207,259	5	1	445,354
13	Oregon	2,091,385	4	0	527,703
14	Arkansas	1,923,295	4	0	485,576
15	Arizona	1,770,900	4	1	446,905
16	West Virginia	1,744,237	4	-1	440,833
17	Nebraska	1,483,493	3	0	498,940
18	Utah	1,059,273	2	0	533,905
19	New Mexico	1,016,000	2	0	513,332
20	Maine	992,048	2	0	503,160
21	Rhode Island	946,725	2	0	478,899
22	Hawaii	768,561	2	0	392,451
23	New Hampshire	737,681	2	0	373,142
24	Idaho	712,567	2	0	359,961
25	Montana	694,409	2	0	350,787
26	South Dakota	665,507	2	0	336,624
27	<u>North Dakota</u>	<u>617,761</u>	<u>1</u>	<u>-1</u>	<u>624,181</u> <u>[Largest]</u>
28	Delaware	548,104	1	0	551,928

Nevada	488,738	1	0	492,396
Vermont	444,330	1	0	448,327
Wyoming	332,416	1	0	335,719
<u>Alaska</u>	<u>300,382</u>	<u>1</u>	<u>0</u>	<u>304,067</u> <u>[Smallest]</u>
*****	*****	***	**	*****
United States	203,302,031	435	11	469,088

1971

93. “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.” U.S.CONST., Twenty-Sixth Amend.

1976

94. A plaintiff sued a New York state official, arguing that Art. I, § 2, cl. 3 *required* one Representative for every 30,000 people, which the district court rejected. *Whelan v. Cuomo*, 415 F.Supp. 251, 258 (E.D.N.Y. 1976).

1980

95. The twentieth census counted 226,542,199 resident persons in the United States, as of April 1, 1980.

1980				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
California	23,667,902	45	2	525,968
New York	17,558,072	34	-5	516,391

Texas	14,229,191	27	3	526,977
Pennsylvania	11,863,895	23	-2	515,945
Illinois	11,426,518	22	-2	519,021
Ohio	10,797,630	21	-2	514,163
Florida	9,746,324	19	4	512,631
Michigan	9,262,078	18	-1	514,352
New Jersey	7,364,823	14	-1	526,011
North Carolina	5,881,766	11	0	534,039
Massachusetts	5,737,037	11	-1	521,549
Indiana	5,490,224	10	-1	549,018
Georgia	5,463,105	10	0	546,427
Virginia	5,346,818	10	0	534,628
Missouri	4,916,686	9	-1	546,383
Wisconsin	4,705,767	9	0	522,815
Tennessee	4,591,120	9	1	510,083
Maryland	4,216,975	8	0	527,056
Louisiana	4,205,900	8	0	525,497
Washington	4,132,156	8	1	516,270
Minnesota	4,075,970	8	0	509,644
Alabama	3,893,888	7	0	555,723
Kentucky	3,660,777	7	0	523,062
South Carolina	3,121,820	6	0	519,868
Connecticut	3,107,576	6	0	517,929
Oklahoma	3,025,290	6	0	504,211
Iowa	2,913,808	6	0	485,565
Colorado	2,889,964	6	1	481,472
Arizona	2,718,215	5	1	543,573

Oregon	2,633,105	5	1	526,533
Mississippi	2,520,638	5	0	504,128
Kansas	2,363,679	5	0	472,642
Arkansas	2,286,435	4	0	571,378
West Virginia	1,949,644	4	0	487,411
Nebraska	1,569,825	3	0	523,335
Utah	1,461,037	3	1	487,012
New Mexico	1,302,894	3	1	433,323
Maine	1,124,660	2	0	562,330
Hawaii	964,691	2	0	482,500
Rhode Island	947,154	2	0	473,577
Idaho	943,935	2	0	471,968
New Hampshire	920,610	2	0	460,305
Nevada	800,493	2	1	399,592
<u>Montana</u>	<u>786,690</u>	<u>2</u>	<u>0</u>	<u>393,345</u> [Smallest]
<u>South Dakota</u>	<u>690,768</u>	<u>1</u>	<u>-1</u>	<u>690,178</u> [Largest]
North Dakota	652,717	1	0	652,695
Delaware	594,338	1	0	595,225
Vermont	511,456	1	0	511,456
Wyoming	469,557	1	0	470,816
Alaska	401,851	1	0	400,481
*****	*****	***	**	*****
United States	226,542,199	435	17	519,235

1981

96. Congress created the Court of Appeals for the Eleventh Circuit by subdividing the then-existing Fifth Circuit but did not increase the size of the Supreme Court.

97. “The [Due Process Clause of the Fifth Amendment] requires that Congress treat similarly situated persons similarly, not that it engage in gestures of superficial equality.” *Rostker v. Goldberg*, 453 U.S. 57, 79 (1981) (regarding Military Selective Service Act).

1982

98. Congress created the Court of Appeals for the Federal Circuit by merging the Court of Customs and Patent Appeals with the appellate division of the Court of Claims, but did not increase the size of the Supreme Court, which remains at 9 members.

1990

99. The twenty-first census counted 248,709,873 resident persons in the United States, as of April 1, 1990.

1990				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
California	29,760,021	52	7	573,832
New York	17,990,455	31	-3	582,081
Texas	16,986,510	30	3	568,660
Florida	12,937,926	23	4	565,364

Pennsylvania	11,881,643	21	-2	567,843
Illinois	11,430,602	20	-2	573,334
Ohio	10,847,115	19	-2	573,017
Michigan	9,295,297	16	-2	583,049
New Jersey	7,730,188	13	-1	596,049
North Carolina	6,628,637	12	1	554,803
Georgia	6,478,216	11	1	591,674
Virginia	6,187,358	11	1	565,143
Massachusetts	6,016,425	10	-1	602,905
Indiana	5,544,159	10	0	556,423
Missouri	5,117,073	9	0	570,867
Wisconsin	4,891,769	9	0	545,194
Tennessee	4,877,185	9	0	544,071
Washington	4,866,692	9	1	543,105
Maryland	4,781,468	8	0	599,828
Minnesota	4,375,099	8	0	548,379
Louisiana	4,219,973	7	-1	605,459
Alabama	4,040,587	7	0	580,373
Kentucky	3,685,296	6	-1	616,495
Arizona	3,665,228	6	1	612,998
South Carolina	3,486,703	6	0	584,285
Colorado	3,294,394	6	0	551,319
Connecticut	3,287,116	6	0	549,278
Oklahoma	3,145,585	6	0	526,267
Oregon	2,842,321	5	0	570,747
Iowa	2,776,755	5	-1	557,485
Mississippi	2,573,216	5	0	517,289

Kansas	2,477,574	4	-1	621,400
Arkansas	2,350,725	4	0	590,560
West Virginia	1,793,477	3	-1	600,542
Utah	1,722,850	3	0	575,928
Nebraska	1,578,385	3	0	528,206
New Mexico	1,515,069	3	0	507,260
Maine	1,227,928	2	0	616,612
Nevada	1,201,833	2	0	603,076
New Hampshire	1,109,252	2	0	556,958
Hawaii	1,108,229	2	0	557,637
Idaho	1,006,749	2	0	505,993
Rhode Island	1,003,464	2	0	502,992
<u>Montana</u>	<u>799,065</u>	<u>1</u>	<u>-1</u>	<u>803,655</u> <u>[Largest]</u>
South Dakota	696,004	1	0	699,999
Delaware	666,168	1	0	668,696
North Dakota	638,800	1	0	641,364
Vermont	562,758	1	0	564,964
Alaska	550,043	1	0	551,947
<u>Wyoming</u>	<u>453,588</u>	<u>1</u>	<u>0</u>	<u>455,975</u> <u>[Smallest]</u>
*****	*****	***	**	*****
United States	248,709,873	435	19	572,466

1992

100. The Supreme Court held that the “method of equal proportions” was satisfied in light of “the need to allocate a fixed number of indivisible Representatives among 50 States of varying

1 populations makes it virtually impossible to have the same district size
2 in any pair of States, let alone 50.” *U.S. Dept. of Commerce v. Montana*,
3 503 U.S. 442, 463 (1992).
4

5 **101.** Mathematically, the *Montana* court was incorrect.

6 **102.** Equal apportionment is only “virtually impossible” if the
7 number of representatives is permanently set to 435, with no state
8 having fewer than one representative.
9

10 **103.** The *Montana* court did not analyze whether capping the
11 number of representatives at 435 itself could violate citizens’ rights to
12 equal representation in the House [Art. I, § 2] and in the electoral
13 college [Art. II, § 1], or the ‘one person, one vote’ principle, particularly
14 in light of a growing population. See 503 U.S. at 451 and n. 24.
15

16 **1995**

17 **104.** As the Answer was always “435”, Congress determined the 2
18 U.S.C. § 2a(a) decennial report regarding the results of the Census and
19 apportionment of seats in the House of Representatives was ‘wasteful,’
20 and terminated the provision requiring submittal to Congress, effective
21 May 15, 2000. 31 U.S.C. § 1113. See Public Law 104–66, § 3003
22 (December 21, 1995); 1090 Stat. 707, Sec. 3003.
23

24 **1996**

25 **105.** Section 201 of Public Law 104-186 struck the phrase “and in
26 case of vacancies in the offices of both the Clerk and the Sergeant at
27 Arms, or the absence or inability of both to act, such duty shall devolve
28

upon the Doorkeeper of the House of Representatives” from 2 U.S.C. § 2a(b). Public Law 104-186, Title II, § 201 (August 20, 1996)

2000

106. The twenty-second census counted 281,421,906 resident persons in the United States, as of April 1, 2000.

2000				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
California	33,871,648	53	1	640,204
Texas	20,851,820	32	2	653,250
New York	18,976,457	29	-2	655,344
Florida	15,982,378	25	2	641,156
Illinois	12,419,293	19	-1	654,686
Pennsylvania	12,281,054	19	-2	647,404
Ohio	11,353,140	18	-1	631,919
Michigan	9,938,444	15	-1	663,722
New Jersey	8,414,350	13	0	648,027
Georgia	8,186,453	13	2	631,306
North Carolina	8,049,313	13	1	620,590
Virginia	7,078,515	11	0	645,518
Massachusetts	6,349,097	10	0	635,557
Indiana	6,080,485	9	-1	676,754
Washington	5,894,121	9	0	656,520
Tennessee	5,689,283	9	0	633,337
Missouri	5,595,211	9	0	622,918

1	Wisconsin	5,363,675	8	-1	671,401
2	Maryland	5,296,486	8	0	663,486
3	Arizona	5,130,632	8	2	642,585
4	Minnesota	4,919,479	8	0	615,709
5	Louisiana	4,468,976	7	0	640,039
6	Alabama	4,447,100	7	0	637,304
7	Colorado	4,301,261	7	1	615,983
8	Kentucky	4,041,769	6	0	674,905
9	South Carolina	4,012,012	6	0	670,844
10	Oklahoma	3,450,654	5	-1	691,764
11	Oregon	3,421,399	5	0	685,709
12	Connecticut	3,405,565	5	-1	681,907
13	Iowa	2,926,324	5	0	586,385
14	Mississippi	2,844,658	4	-1	713,232
15	Kansas	2,688,418	4	0	673,456
16	Arkansas	2,673,400	4	0	669,933
17	Utah	2,233,169	3	0	745,571
18	Nevada	1,998,257	3	1	667,344
19	New Mexico	1,819,046	3	0	607,940
20	West Virginia	1,808,344	3	0	604,359
21	Nebraska	1,711,263	3	0	571,790
22	Idaho	1,293,953	2	0	648,637
23	Maine	1,274,923	2	0	638,866
24	New Hampshire	1,235,786	2	0	619,208
25	Hawaii	1,211,537	2	0	608,321
26	Rhode Island	1,048,319	2	0	524,831
27	-				
28					

<u>Montana</u>	<u>902,195</u>	<u>1</u>	<u>0</u>	<u>905,316</u> <u>[Largest]</u>
Delaware	783,600	1	0	785,068
South Dakota	754,844	1	0	756,874
North Dakota	642,200	1	0	643,756
Alaska	626,932	1	0	628,933
Vermont	608,827	1	0	609,890
<u>Wyoming</u>	<u>493,782</u>	<u>1</u>	<u>0</u>	<u>495,304</u> <u>[Smallest]</u>
*****	*****	***	**	*****
United States	281,421,906	435	12	646,952

107. On December 12, 2000, the Supreme Court issued an injunction regarding the presidential election, predicated upon Fifth Amendment due process grounds. *Bush v. Gore*, 531 U.S. 98 (2000).

108. George W. Bush had 271 electors to Al Gore's 267, though Bush lost the national popular vote by 537,179.

2010

109. The twenty-third census counted 308,745,538 resident persons in the United States, as of April 1, 2010.

2010				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
California	37,253,956	53	0	704,566
Texas	25,145,561	36	4	701,901
New York	19,378,102	27	-2	719,298

Florida	18,801,310	27	2	700,029
Illinois	12,830,632	18	-1	714,688
Pennsylvania	12,702,379	18	-1	707,495
Ohio	11,536,504	16	-2	723,031
Michigan	9,883,640	14	-1	707,973
Georgia	9,687,653	14	1	694,826
North Carolina	9,535,483	13	0	735,829
New Jersey	8,791,894	12	-1	733,958
Virginia	8,001,024	11	0	730,703
Washington	6,724,540	10	1	675,337
Massachusetts	6,547,629	9	-1	728,849
Indiana	6,483,802	9	0	722,398
Arizona	6,392,017	9	1	712,522
Tennessee	6,346,105	9	0	708,381
Missouri	5,988,927	8	-1	751,435
Maryland	5,773,552	8	0	723,741
Wisconsin	5,686,986	8	0	712,279
Minnesota	5,303,925	8	0	664,360
Colorado	5,029,196	7	0	720,704
Alabama	4,779,736	7	0	686,140
South Carolina	4,625,364	7	1	663,711
Louisiana	4,533,372	6	-1	758,994
Kentucky	4,339,367	6	0	725,101
Oregon	3,831,074	5	0	769,721
Oklahoma	3,751,351	5	0	752,976

Connecticut	3,574,097	5	0	716,326
Iowa	3,046,355	4	-1	763,447
Mississippi	2,967,297	4	0	744,560
Arkansas	2,915,918	4	0	731,557
Kansas	2,853,118	4	0	715,953
Utah	2,763,885	4	1	692,691
Nevada	2,700,551	4	1	677,358
New Mexico	2,059,179	3	0	689,091
West Virginia	1,852,994	3	0	619,938
Nebraska	1,826,341	3	0	610,608
Idaho	1,567,582	2	0	786,750
Hawaii	1,360,301	2	0	683,431
Maine	1,328,361	2	0	666,537
New Hampshire	1,316,470	2	0	660,723
<u>Rhode Island</u>	<u>1,052,567</u>	<u>2</u>	<u>0</u>	<u>527,624</u> <u>[Smallest]</u>
<u>Montana</u>	<u>989,415</u>	<u>1</u>	<u>0</u>	<u>994,416</u> <u>[Largest]</u>
Delaware	897,934	1	0	900,877
South Dakota	814,180	1	0	819,761
Alaska	710,231	1	0	721,523
North Dakota	672,591	1	0	675,905
Vermont	625,741	1	0	630,337
Wyoming	563,626	1	0	568,300
*****	*****	***	**	*****
United States	308,745,538	435	12	710,767

1 110. One district court held the 435-member cap to be valid,
2 without considering the Art. II issue. *Clemons v. U.S. Dep't of*
3 *Commerce*, 710 F. Supp.2d 570, 590 (N.D. Miss. 2010). However, the
4 Supreme Court ordered that *Clemons* be remanded “with instructions
5 to dismiss the complaint for lack of jurisdiction.” 562 U.S. 1105, 131
6 S.Ct. 821 (Mem.) (2010). But, see *infra*, *Rucho v. Common Cause*, 139
7 S.Ct. 2484, 2496 (2019).
8

9
10 **2013**

11 111. “[B]asic due process and equal protection principles [are]
12 applicable to the Federal Government.” *U.S. v. Windsor*, 570 U.S. 744,
13 769-70 (2013) (regarding Defense Of Marriage Act) (citing U.S.CONST.,
14 Fifth Amend.; and *Bolling v. Sharpe*, 347 U.S. 497 (1954)).
15

16 The liberty protected by the Fifth Amendment's Due Process
17 Clause contains within it the prohibition against denying to
18 any person the equal protection of the laws. While the Fifth
19 Amendment itself withdraws from Government the power to
20 degrade or demean in the way this law does, the equal
21 protection guarantee of the Fourteenth Amendment makes
that Fifth Amendment right all the more specific and all the
better understood and preserved.

22 *Windsor*, 570 U.S. at 774 (citing *Bolling*, 347 U.S., at 499–500; and
23 *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 217–218 (1995)).

24 112. As an alternative to an analysis under *Windsor*, “...the
25 Citizenship Clause [of the Fourteenth Amendment] guarantees citizens
26 equal treatment by the Federal Government with respect to civil
27
28

rights.” *U.S. v. Vaello Madero*, 142 S.Ct. 1539, 1551 (2022) (Thomas, J., Concurring).

2016

113. In the 2016 presidential election, Donald Trump obtained 304 electoral votes to Hillary Clinton’s 227, despite losing the popular vote by 2,868,686 votes.

2019

114. Abrogating *Clemons v. U.S. Dep’t of Commerce*, *supra*, the Supreme Court explained:

In the leading case of *Baker v. Carr*, voters in Tennessee complained that the State’s districting plan for state representatives “debase[d]” their votes, because the plan was predicated on a 60-year-old census that no longer reflected the distribution of population in the State. The plaintiffs argued that votes of people in overpopulated districts held less value than those of people in less-populated districts, and that this inequality violated the Equal Protection Clause of the Fourteenth Amendment. The District Court dismissed the action on the ground that the claim was not justiciable, relying on this Court’s precedents, including *Colegrove*. *Baker v. Carr*, 179 F. Supp. 824, 825, 826 (MD Tenn. 1959). This Court reversed. It identified various considerations relevant to determining whether a claim is a nonjusticiable political question, including whether there is “a lack of judicially discoverable and manageable standards for resolving it.” 369 U.S. at 217, 82 S.Ct. 691. The Court concluded that the claim of population inequality among districts did not fall into that category, because such a claim could be decided under basic equal protection principles. *Id.*, at 226, 82 S.Ct. 691. In *Wesberry v. Sanders*, the Court extended its ruling to malapportionment of congressional districts, holding that Article I, § 2, required that “one man’s vote in a congressional

election is to be worth as much as another's." 376 U.S. at 8, 84 S.Ct. 526.

Rucho v. Common Cause, 139 S.Ct. 2484, 2496 (2019).

2020

115. The twenty-fourth census counted 331,449,281 resident persons in the United States, as of April 1, 2020.

2020				
STATE	Population	Number of Seats	Change in Seats	Average Population Per District
California	39,538,223	52	-1	761,091
Texas	29,145,505	38	2	767,981
Florida	21,538,187	28	1	770,376
New York	20,201,249	26	-1	777,529
Pennsylvania	13,002,700	17	-1	765,403
Illinois	12,812,508	17	-1	754,279
Ohio	11,799,448	15	-1	787,257
Georgia	10,711,908	14	0	766,091
North Carolina	10,439,388	14	1	746,711
Michigan	10,077,331	13	-1	775,726
New Jersey	9,288,994	12	0	774,541
Virginia	8,631,393	11	0	786,777
Washington	7,705,281	10	0	771,595
Arizona	7,151,502	9	0	795,436
Massachusetts	7,029,917	9	0	781,497
Tennessee	6,910,840	9	0	768,544
Indiana	6,785,528	9	0	754,476

Maryland	6,177,224	8	0	773,160
Missouri	6,154,913	8	0	770,035
Wisconsin	5,893,718	8	0	737,184
Colorado	5,773,714	8	1	722,771
Minnesota	5,706,494	8	0	713,719
South Carolina	5,118,425	7	0	732,102
Alabama	5,024,279	7	0	718,579
Louisiana	4,657,757	6	0	776,911
Kentucky	4,505,836	6	0	751,557
Oregon	4,237,256	6	1	706,917
Oklahoma	3,959,353	5	0	792,703
Connecticut	3,608,298	5	0	721,660
Utah	3,271,616	4	0	818,813
Iowa	3,190,369	4	0	798,102
Nevada	3,104,614	4	0	777,116
Arkansas	3,011,524	4	0	753,439
Mississippi	2,961,279	4	0	740,979
Kansas	2,937,880	4	0	735,216
New Mexico	2,117,522	3	0	706,740
Nebraska	1,961,504	3	0	654,444
Idaho	1,839,106	2	0	920,689
West Virginia	1,793,716	2	-1	897,523
Hawaii	1,455,271	2	0	730,069
New Hampshire	1,377,529	2	0	689,545
Maine	1,362,359	2	0	681,791
Rhode Island	1,097,379	2	0	549,082

<u>Montana</u>	<u>1,084,225</u>	<u>2</u>	<u>1</u>	<u>542,704</u> <u>[Smallest]</u>
<u>Delaware</u>	<u>989,948</u>	<u>1</u>	<u>0</u>	<u>990,837</u> <u>[Largest]</u>
South Dakota	886,667	1	0	887,770
North Dakota	779,094	1	0	779,702
Alaska	733,391	1	0	736,081
Vermont	643,077	1	0	643,503
Wyoming	576,851	1	0	577,719
*****	*****	***	**	*****
United States	331,449,281	435	7	761,169

2022 – The Growing Democracy Deficit

Federal Courts

116. Despite Congress having created 12 territorial Courts of Appeals and the Federal Circuit Court of Appeals, hundreds of district courts, numerous Article I and II courts and tribunals, and otherwise dramatically expanded the federal judiciary over the past century, it has left the number of Supreme Court Justices at 9 since 1869.

U.S. Senate

1910 Population Distribution

117. The U.S. population in 1910 was 92,228,496 persons.

118. In 1910, New York was the largest state, with over 9 million residents. The second largest state had over 7 million residents, the third largest had over 5 million residents, and the fourth largest had

1 over 4 million residents. Three (3) states in 1910 had 3 million
2 residents.
3

4 **119.** So, the approximately 34 million people residing in the seven
5 (7) largest states in 1910 were represented by two (2) senators per state
6 [14 total].

7 **120.** Thirteen (13) states had 2 million residents in 1910. Eleven
8 (11) states had one million residents or more; seven (7) states had
9 greater than 500,000 residents; and eight (8) states had fewer than
10 500,000 residents.
11

12 **121.** Thus, 39 of the states in 1910 had fewer than 3 million
13 residents, with each state being represented by two (2) senators.
14

15 2020 Population Distribution

16 **122.** The U.S. population in 2020 was 331,449,281 persons.

17 **123.** In 2020, the seven (7) largest states had, respectively,
18 populations of 40 million (CA), 30 million (TX), 22 million (FL), 20
19 million (NY), 13 million (PA), 12 million (IL), and 11 million (OH); with
20 two (2) senators representing each state.

21 **124.** So, approximately 148 million residents are represented by a
22 total of 14 senators
23

24 **125.** Three (3) states in 2020 had populations exceeding 10
25 million; one (1) state had 9 million; and the next state had 8 million;
26 with two (2) senators representing each state.
27
28

1 **126.** Thus, the next 47 million residents are represented by a total
2 of ten (10) senators.
3

4 **127.** As of 2020, three (3) states' populations exceeded 7 million;
5 four (4) states' populations exceeded 6 million; and five (5) states'
6 populations exceeded 5 million; with two (2) senators representing each
7 state.
8

9 **128.** So, these 70 million residents are represented by a total of 24
10 senators.
11

12 **129.** Three (3) states' populations exceeded 4 million; six (6)
13 states' populations exceeded 3 million; and three (3) states exceeded 2
14 million; with two (2) senators representing each state.
15

16 **130.** So, these 36 million residents are represented by a total of 24
17 senators.
18

19 **131.** Finally, eight (8) states had populations greater than 1
20 million residents, and six (6) states had populations below 1 million
21 residents; with two (2) senators representing each state.
22

23 **132.** So, these 16 million residents are represented by a total of 28
24 senators.
25

26 **133.** "Remember ... Maine". Congress can subdivide states at any
27 time with the assent of any given state's legislature. U.S.CONST., Art.
28 IV, § 3.

134. As the 576,851 residents of Wyoming have two (2) senators,
this provides a minimum size ('constitutional unit') for future state

1 creation via subdivision of existing states. Any polity, within any one
2 state, having a population equal to or exceeding that of Wyoming
3 should be entitled to equal footing as Wyoming, in terms of
4 representation in the Senate, and subdivision into its own state.
5

6 *House of Representatives*

7 **135.** In 1912, when there were 435 congressional districts, the
8 average congressional district had 210,328 residents.
9

10 **136.** The largest district had 228,027 residents; and the smallest
11 had 80,293.

12 **137.** Re-apportionment after the 2020 census was once again
13 constrained by the 435-member cap in place for the past 110 years.

14 **138.** The average congressional district had 761,169 residents in
15 2020.
16

17 **139.** The largest district after 2020 has 990,837 residents (DE),
18 and the smallest has 524,704 (MT).

19 **CAUSE OF ACTION**

20 **Declaratory Relief – 435 Member Cap Unconstitutional**

21 **140.** Plaintiff re-incorporates the preceding paragraphs as if fully
22 set forth herein.
23

24 **141.** Claims pursuant to Art. I, § 2 are justiciable, as the
25 Constitution “require[s] that ‘one man’s vote in a congressional election
26 is to be worth as much as another’s.’” *Rucho v. Common Cause*, 139
27 S.Ct. at 2496 (quoting *Wesberry v. Sanders*, 376 U.S. at 7)).
28

1 In a case of actual controversy within its jurisdiction, ... any
2 court of the United States, upon the filing of an appropriate
3 pleading, may declare the rights and other legal relations of
4 any interested party seeking such declaration, whether or not
5 further relief is or could be sought. Any such declaration shall
6 have the force and effect of a final judgment or decree and
7 shall be reviewable as such.

8 28 U.S.C. § 2201(a).

9 142. 2 U.S.C. § 2a(a), which permanently limits the House of
10 Representatives to 435 members, deprives citizens and residents of
11 their constitutional right to equal representation in the House of
12 Representatives [U.S.CONST., Art. I, § 2].

13 143. Furthermore, 2 U.S.C. § 2a(a), which permanently limits the
14 House of Representatives to 435 members, deprives citizens and
15 residents of their constitutional right to equal representation in the
16 electoral college for the presidency [U.S.CONST., Art. II, § 1]

17 144. Congress' failure to increase or otherwise change the number
18 of Representatives commensurate with the total population of the
19 United States and the relative populations of the several States, and
20 instead leaving the number [435] unchanged since 1912, and self-
21 executing since 1941, violates the 'one person, one vote' principle.

22 145. Particularly when read together with the Art. II, § 1
23 requirements of the 'electoral college,' as well as the other above-quoted
24 sections of the Constitution pertaining to voting, the 'one person, one
25
26
27
28

1 vote' principle must apply to relative district size among the states, as
2 well as within each state.
3

4 PRAYERS FOR RELIEF

5 WHEREFORE, Plaintiff prays for the following relief:

6 146. That the Court hold that the 435-Member-cap established in
7 2 U.S.C. § 2a(a) is unconstitutional in light of Art. I, § 2; Art. II, § 1; and
8 the 'one person, one vote' principle. Read together the clauses require
9 roughly equal district sizes among the States, as well as within each
10 State, to give full effect to both Art. I, § 2 and Art. II, § 1.
11

12 147. That Congress be directed to either create a ratio of member-
13 per-unit-of-population applicable equally to each and every of the
14 several States; or a sufficient overall whole number of districts to be
15 apportioned to provide roughly equal district sizes among the States,
16 as well as within each State, so as to give full effect to both Art. I, § 2,
17 and Art. II, § 1.
18

19 148. For any such other and further relief as the Court may deem
20 to be just and equitable.

21 Submitted this 18th day of July, 2022,
22

23 KSB LITIGATION, P.S.

24
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